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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY MICHAEL CABAN,

Defendant and Appellant.

D052752

(Super. Ct. No. SCE74445)

APPEAL from a judgment of the Superior Court of San Diego County, William J. McGrath, Jr., Judge. Affirmed.

Timothy Michael Caban entered a negotiated guilty plea to battery with serious bodily injury (Pen. Code,¹ § 243, subd. (d)) and admitted personally inflicting great bodily injury (§ 12022.7, subd. (a)) and committing a hate crime (§ 422.75, subd. (a)). Caban also admitted he had a prior serious/violent felony or strike conviction (§ 667, subds. (b)-(i)) and a prior serious felony conviction (§ 667, subd. (a)(1)). The plea

¹ Statutory references are to the Penal Code.

bargain called for a stipulated prison sentence of five years for this case plus 12 years in a companion case (Super. Court No. SCE 272707) for a total stipulated sentence of 17 years.

In this case, the trial court imposed two years on the battery count (one-third of the mid-term doubled under the Three Strikes Law) plus a three-year enhancement for inflicting great bodily injury. The court stayed the hate crime enhancement under section 654. The court ruled Caban was not entitled to custody credits in this case because he was sentenced consecutively and the custody credits were applied in the other case. The court assessed a restitution fine of \$3,400 pursuant to section 1202.4, subdivision (b). The court set victim restitution at \$2,550, subject to modification at a later date if additional bills were submitted.

FACTS

On October 10, 2006, Larry McPherson, Eric Socorro and Socorro's wife met at the 67 Bar and Grill in Lakeside for drinks. While in the outdoor patio area, McPherson and Socorro shook hands. Caban, who also was in the patio area, asked, "Are you guys gay?" Socorro replied, "So what if we are?" Caban approached and blindsided Socorro as he said, "I hate faggots." Caban punched Socorro on the side of his head; Socorro fell to the ground and dislocated his shoulder. Caban continued to punch Socorro in the head area until he was dragged off Socorro.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks this court to review the record

for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable, issues: (1) whether the trial court imposed an improper sentence; (2) whether the trial court properly awarded custody credits; (3) whether the probation officer included improper material in her report; (4) whether trial counsel provided ineffective assistance at the sentencing hearing; (5) whether the trial court determined victim restitution properly; and (6) whether the trial court properly imposed the restitution fines.

We granted Caban permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Competent counsel has represented Caban on this appeal.

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

NARES, J.